

**TOWN OF DAVIE
REGULAR MEETING
APRIL 4, 2007**

1. PLEDGE OF ALLEGIANCE

The meeting was called to order at 7:01 p.m. and was followed by the Pledge of Allegiance.

2. ROLL CALL

Present at the meeting were Mayor Truex, Vice-Mayor Caletka, Councilmembers Crowley, Luis and Starkey. Also present were Town Administrator Shimun, Town Attorney Cherof, and Assistant Town Clerk McDaniel recording the meeting.

3. OPEN PUBLIC MEETING

Mayor Truex explained the procedures for the open public hearing.

Damiano Pignato, 6920 SW 56 Court, reported that the Parks and Recreation Advisory Board had voted to request Council to allow Camp Integration for autistic children to be held at Robbins Lodge from July 29th to August 3rd at a rate of \$150 per day, or the resident rate. He introduced Melissa Tobin and Julia Harper, to describe the camp.

Ms. Tobin explained that she and Ms. Harper had created the camp two years ago, and their mission was to provide intense occupational, physical, speech and behavior therapy to children with autism, learning disabilities, and other exceptionalities. Ms. Harper explained that this camp allowed kids to combine a camp experience with the intensive therapy to prepare them to be functional before the school year began. Ms. Tobin said they were applying for non-profit status, and in the future, they could request a donation for the camp. She asked to be able to use Robbins Lodge at the reduced rate so the costs would not need to be passed on to the parents. Ms. Tobin stated they were pursuing grants for funding.

Mayor Truex recommended that staff create a resolution for the next meeting agenda. Councilmember Starkey felt this was a special category, and noted the scarcity of programs like this for autistic kids. Ms. Harper explained that all of their licensed therapists carried liability insurance, and they would also purchase insurance to cover Robbins Lodge.

Linda Owen described the EASE Foundation and thanked Council for all their help over the years. The Foundation had allowed Davie families to be provided with food and financial assistance.

Todd Bothelm, Executive Director of the Old Davie School, invited everyone to the April 13th Art Social student show opening titled "Everglades Eyes." He also advised that the School's "Generations of Taste" event, featuring pioneer home-cooking recipes, would be held on April 14th.

Mr. Bothelm said he had been in Tallahassee the previous week for the General Operating Support Grant Panel Review, and the Old Davie School ranked fourth in the State for small museums.

Judy Paul, 14421 SW 24 Street, discussed their intent to create a trail on the section of SW 6 Street located west of 148th. She had spoken with one property owner, who was amenable to the proposal, and Ms. Paul hoped that at least this section could be done.

Ms. Paul was hopeful that the firefighters' contract situation would soon be resolved. She was concerned about the water usage situation and wanted to know what measures the Town was taking to ensure compliance with the restrictions.

John Pisula congratulated Councilmembers on their elections. Mr. Pisula stated that he was concerned with access to Western High School fields and felt that the Town had some recourse regarding their lighting expenditure. He hoped the Broward County School Board would grant them use of the field. Regarding Shenandoah Park, Mr. Pisula hoped to arrange a meeting in that park with Councilmembers within two weeks to show them the dilapidated state of the fields there.

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Mr. Pisula said the Youth Education and Safety Board had discussed education, and wanted Davie to more assertive in getting things accomplished. Residents were especially concerned about sexual predator notifications.

Councilmember Luis advised that he had an appointment to meet someone at Shenandoah Park.

Mayor Truex asked staff to prepare an explanation of the lighting issue brought up by Mr. Pisula for Council's next meeting.

Councilmember Starkey asked to make sure the sexual predator link was still on the Town's website. She pointed out that the Town needed a middle school and asked Mr. Pisula to have the Youth Education and Safety Board look into this.

Don Lunny, representing Steven, Amanda and Travis Rodriguez, explained that the Rodriguez's driveway led onto SW 13th Street, and they had purchased their section of the road from the previous owner. During permitting to rebuild their home, they had been informed that they were responsible to build the roadway up to public standard, or to move the driveway. Mr. Lunny had met with Town staff and adjacent owners to try resolve the situation. An arrangement had been devised to give government access and give licenses to adjacent homeowners to use their land. He asked Council to allow Mr. Rodriguez to obtain the certificate of occupancy.

Councilmember Crowley asked staff if Mr. Lunny's proposal was feasible. Development Services Director Kutney explained the problem and the request, noting that staff had no discretion because of how the Code was currently written. He requested Council's direction. Mayor Truex wanted Mr. Cherof's input before giving any direction, and Councilmember Crowley agreed.

Mr. Cherof said he would review this issue and felt amending the code might be a solution. He recommended placing this issue on Council's next agenda.

David Sigerson, the Town's lobbyist, provided an interim report on legislative issues. He noted that the property tax problem was the biggest issue in Tallahassee now and explained that the rollback would not affect voter-approved debt, only ad valorem taxes. The rollback would calculate from 2002, using a strict growth plus CPI only growth in revenue. The constitutional amendment piece included an additional statewide penny sales tax to replace the local effort toward school tax, and the options to enact an additional penny, and/or half-penny local sales tax county by county. Mr. Sigerson felt the House and Senate would not settle this issue prior to the end of this regular session.

Mayor Truex asked how the "replacement sales tax" would come back to the Town. Mr. Sigerson explained the different sales tax incomes in different areas of the State, and said the redistribution formula was still being negotiated.

Councilmember Starkey advised staff to work with the Budget Advisory Committee to keep them apprised of the situation, and of the possible impact the changes would have on the Town's budget. She felt the public should be involved in the process as well. Mr. Shimun said they were tracking the budget process, and would have a good idea of what was going on by the end of the session.

Vice-Mayor Caletka was concerned about taxing a fluctuating item as opposed to property, and about giving the control of the tax to the State instead of to local government. Mr. Sigerson agreed with Vice-Mayor Caletka's concerns. Mr. Sigerson felt the Senate realized how complex the property tax system was, and that it would take years to resolve the situation.

Mr. Sigerson said the mobile home relocation bill was of great concern to Davie as well. The current bill would require the municipality or county allowing the rezoning to pay the shortfall in relocation costs between what was now allowed and actual costs. Mayor Truex remarked on the dearth of parks to which a mobile park owner could relocate, and Mr. Sigerson agreed this was a severe problem.

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with the bill. He and Councilmember Starkey had discussed this with the bills' sponsor, and they were disappointed that the sponsor believed municipalities should be responsible for relocation costs, which could total \$15,000. Mr. Sigerson estimated that the Town's liability would total approximately \$70,000,000.

Regarding the Town's Community Budget request, Mr. Sigerson said there was \$450,000 available for Davie water projects.

Mr. Sigerson said Davie's report on the mobile home park rezoning issue was appreciated in Tallahassee, and the staff and consultants should be commended.

Councilmember Starkey said the governor would remove the cap on the Sadowski funds, and these could be used for additional relocation funding. Mr. Sigerson said using these funds and SHIP funds toward the relocation costs could be allowed by Statute, but this would probably not happen.

Mayor Truex felt property owners would argue that they had a right to the rezonings, and he wanted the State to allow municipalities more discretion to deny the rezonings. Councilmember Starkey said this was one of the options being considered. Mr. Shimun noted the inequity of making municipalities responsible, since school and special districts benefited without paying for any of the benefits.

Mr. Cherof said there was a bill pending that determined a moratorium exceeding one year fell under the Burt J. Harris claims procedure, and said this was a bill that should be followed. Mr. Sigerson had discussed adding a provision to a bill that would recognize a municipality's right to a moratorium under certain conditions.

Mr. Shimun said the true benefactor would be the developer, and wondered why they did not model Davie's conversion plan that required developers to present a relocation plan. Mr. Sigerson said the answer was politics, and developers' influence over the legislation.

Mayor Truex said staff requested item 6.4 be tabled to May 16, 2007.

Councilmember Crowley made a motion, seconded by Councilmember Starkey, to table. In a voice vote, all voted in favor. (Motion carried 5-0)

Mayor Truex said 4.20 and 4.21 needed to be added to the agenda.

Councilmember Crowley made a motion, seconded by Councilmember Starkey, to add items 4.20 and 4.21. In a voice vote, all voted in favor. (Motion carried 5-0)

4. APPROVAL OF CONSENT AGENDA

Minutes

4.1 January 17, 2007 (Regular Meeting)

4.2 February 7, 2007 (Regular Meeting)

Parade Permit (5K Run)

4.3 A Child is Missing, Inc. (April 29, 2007)

Resolutions

4.4 **TRUSTEE - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA,**
R-2007-89 **APPOINTING MERRILL LYNCH BANK & TRUST CO., FSB AS TRUSTEE FOR**
THE TOWN OF DAVIE DEFERRED COMPENSATION PLAN; AND PROVIDING
AN EFFECTIVE DATE.

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- 4.5
R-2007-90 **GRANT AWARD CALCULATION** - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING THE FLORIDA COMMUNITIES TRUST GRANT AWARD CALCULATION STATEMENT FOR THE DAVIE FARM PARK PROJECT.
- 4.6
R-2007-91 **DECLARATION OF RESTRICTIVE COVENANTS** - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A DECLARATION OF RESTRICTIVE COVENANTS WITH THE FLORIDA COMMUNITIES TRUST FOR THE DAVIE FARM PARK PROJECT SITE.
- 4.7
R-2007-92 **AGREEMENT** - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT WITH THE BROWARD COUNTY SCHOOL BOARD FOR THE PROVISION OF SUMMER FOOD MEAL SERVICE FOR THE TOWN'S FLORIDA DEPARTMENT OF EDUCATION SUMMER FOOD SERVICE PROGRAM. (\$13,000)
- 4.8
R-2007-93 **AGREEMENT** - A RESOLUTION OF THE TOWN OF DAVIE, ADOPTING THE LOCAL HOUSING ASSISTANCE PLAN (LHAP) FOR 2007/08 TO 2009/10 UNDER THE STATE HOUSING INITIATIVES PARTNERSHIP (SHIP) PROGRAM; AUTHORIZING THE MAYOR TO EXECUTE THE INTERLOCAL AGREEMENT WITH BROWARD COUNTY FOR THE ESTABLISHMENT AND ADMINISTRATION OF A JOINT LOCAL HOUSING ASSISTANCE PROGRAM FOR 2007/2008; APPROVING DAVIE'S SHIP HOUSING DELIVERY GOALS/BUDGET STRATEGIES FOR FY 2007/08; AND PROVIDING FOR AN EFFECTIVE DATE.
- 4.9
R-2007-94 **CONTRACT EXTENSION** - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING AN EXTENSION OF THE CONTRACT BETWEEN THE TOWN AND FIRST AMERICAN TELECOMMUNICATIONS FOR PAY TELEPHONES. (\$332.50/month less revenues)
- 4.10
R-2007-95 **CONTRACT EXTENSION** - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING AN EXTENSION TO THE CONTRACT BETWEEN THE TOWN AND ZAMBELLI FIREWORKS, MANUFACTURING CO., INC. d/b/a ZAMBELLI FIREWORKS INTERNATIONALE FOR AN INDEPENDENCE DAY FIREWORKS DISPLAY. (\$20,000)
- 4.11
R-2007-96 **CONTRACT EXTENSION** - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING AN EXTENSION OF THE CONTRACT BETWEEN THE TOWN AND LARUE PLANNING AND MANAGEMENT SERVICES, INC. FOR MISCELLANEOUS PLANNING SERVICES.
- 4.12
R-2007-97 **CONTRACT EXTENSION** - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING AN EXTENSION OF THE CONTRACT BETWEEN THE TOWN AND DUNCAN ASSOCIATES FOR MISCELLANEOUS PLANNING SERVICES.

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- 4.13
R-2007-98 **CONTRACT EXTENSION - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING AN EXTENSION OF THE CONTRACT BETWEEN THE TOWN AND ILER PLANNING GROUP FOR MISCELLANEOUS PLANNING SERVICES.**
- 4.14
R-2007-99 **ARCHITECTUAL SERVICES - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, SELECTING THE FIRMS OF CPZ ARCHITECTS, INC. AND ACAI ASSOCIATES, INC. TO PROVIDE MISCELLANEOUS ARCHITECTURAL SERVICES AND AUTHORIZING THE TOWN ADMINISTRATOR OR HIS DESIGNEE TO NEGOTIATE AGREEMENTS FOR SUCH SERVICES.**
- 4.15
R-2007-100 **RELEASE OF SECURITY LIEN - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE A RELEASE OF LIEN RELEASING A SECURITY LIEN TO SECURE THE REQUIRED SUBDIVISION IMPROVEMENTS FOR THE DASILVA PLAT; AND PROVIDING FOR AN EFFECTIVE DATE.**
- 4.16
R-2007-101 **BID - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, ACCEPTING THE BID FOR A TRAILER MOUNTED SEWAGE PUMP. (\$49,856 - Premier Pump, LLC)**
- 4.17 **PLAT - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING A PLAT KNOWN AS THE “STONE BRIDGE ESTATES” AND AUTHORIZING THE MAYOR AND TOWN CLERK TO ACKNOWLEDGE THE APPROVAL BY AFFIXING THE MAYOR’S SIGNATURE AND THE TOWN SEAL TO SAID PLAT; AND PROVIDING AN EFFECTIVE DATE. (P 3-2-06, Stonebridge Estates, generally located on the southwest corner of SW 26 Street and Flamingo Road) [see related items 4.19 and 6.1] *Planning and Zoning Board recommended approval subject to the understanding that the Board was not making a judgment on the appropriateness of the SW 26 Street access***

Quasi-Judicial Consent Agenda

- 4.18 SPM 12-03-06, Garden Mausoleum #3, Forest Lawn Memorial Gardens South, 2401 SW 64 Avenue (A-9, Cemetary District - Broward County) *Site Plan Committee approved subject to the planning report*

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- 4.19 MSP 11-2-05, Stonebridge Estates, generally located on the southwest corner of SW 26 Street and Flamingo Road (AG) [see related items 4.17 and 6.1] *Site Plan Committee recommended approval based on the seven items left over from the last meeting and the following: 1) that the applicant provide tree wells or retaining walls as required for the trees which were to remain and which the applicant would build around; 2) that the entrance road would not have any driveways connected onto it (just for that length of road that comes from Flamingo Road down to the loop); 3) check with Central Broward Water Control District on the berm and drainage easement; 4) add the sidewalk on the west side of the entrance road that enters the loop; 5) add 2x4 wood barricades for tree protection on all trees slated to remain on the tree landscape plan; 6) have a minimum Code black vinyl chain-link fence that separates the recreation trail from the site to be constructed before land development and to have gates from each lot into that pedestrian trail; 7) that the sheet L-1, dated 3/6/07 mitigation, will be done before the first certificate of occupancy is issued at this project; 8) that the southern property line and a portion of the western property line be cleaned up and the fence repaired (clean up is defined as removing the "invasive and exotics" on the applicant's property and those that have fallen onto the applicant's property); 9) that on each of the seven southern lots and when the landscaping was installed for the house that was being built, that four Oak trees 14-feet tall, be planted on each of those lots in addition to the Code requirement; and 10) that if the Central Broward Water Control District does not grant the variances that are needed, return to show the revisions to the Committee*

Items to be added - Proclamations

4.20 Water Conservation Month (April 2007)

4.21 Aids Walk Ft. Lauderdale

Vice-Mayor Caletka pulled items 4.2, 4.7, 4.13 and 4.14. Councilmember Crowley pulled items 4.11, 4.17 and 4.19. Councilmember Starkey pulled item 4.12. Mayor Truex pulled items 4.10, 4.18, 4.20 and 4.21.

Councilmember Starkey made a motion, seconded by Mayor Truex, to approve the Consent Agenda less items 4.2, 4.7, 4.10, 4.11, 4.12, 4.13, 4.14, 4.17, 4.18, 4.19, 4.20 and 4.21. In a voice vote, all voted in favor. (Motion carried 5-0)

5. DISCUSSION OF CONSENT AGENDA ITEMS

4.2 Vice-Mayor Caletka asked to table this item, as he wanted to be sure the concessions offered by the developer had been included.

Vice-Mayor Caletka made a motion, seconded by Councilmember Crowley, to table to their next meeting [April 18, 2007]. In a voice vote, all voted in favor. (Motion carried 5-0)

4.7 Vice-Mayor Caletka recused himself from this item.

Councilmember Crowley made a motion, seconded by Councilmember Starkey, to approve. In a voice vote, with Vice-Mayor Caletka abstaining, all voted in favor. (Motion carried 4-0)

4.10 Mayor Truex was not sure he favored this \$20,000 expenditure this year, given the uncertainty of the upcoming budget year.

Councilmember Crowley supported this yearly planned event for the residents. Councilmember Starkey supported it as well. Councilmember Luis supported it, but feared it might be the last time it was included in their budget.

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Councilmember Starkey made a motion, seconded by Councilmember Luis, to approve. In a voice vote, all voted in favor. (Motion carried 5-0)

4.11 Councilmember Crowley objected to the increase from the existing \$125 per hour to \$140 per hour.

Councilmember Crowley made a motion, seconded by Vice-Mayor Caletka, to approve based on the existing \$125 per hour price, with no increase.

Councilmember Starkey said that Council had not received all of the paperwork regarding insurance and corporate information that they requested be attached to these items. Mr. Kutney could not state that this had been researched, because the Finance Department had done this last year, and he could not be sure. Mayor Truex recommended that Council approve subject to this being done.

Mr. Kutney referred to the original rate and price schedules from 2004, and noted that staff did not find a problem with the increases for LaRue and Iler because neither had asked for increases to which they had been entitled for the past four contract years. Mr. Kutney noted that Duncan and Associates had been receiving \$175 since 2004, and the LaRue and Iler increases did not approach this amount.

Vice-Mayor Caletka said he took serious objection to staff's determination that this was a reasonable increase, especially to Iler's request in item 4.13, which represented a 45% increase. Mr. Kutney said this was reasonable because they had not requested an increase earlier, and because the request was still not even close to the Duncan Associates' price. Vice-Mayor Caletka thought staff should not recommend increases that exceeded 3% per year. Mr. Kutney asked Council for specific guidelines in this regard, stating they had been trying to be fair in this case.

Mr. Kutney reminded Council that the Town had yet to actually use Duncan to work on a project as yet. He noted that Duncan was a very well-regarded firm and this was one reason they recommended keeping the contract. The Town used Iler and LaRue because they were local, and therefore more accessible. Mr. Kutney stated that this was the last extension year for LaRue, and if Council did not agree to their rate, the Town would not use them.

Councilmember Crowley added the conditions regarding insurance and SunBiz information to his motion. In a voice vote, with Mayor Truex dissenting, all voted in favor. (Motion carried 4-1)

4.12 Councilmember Starkey noted that this item lacked the backup they had requested as well.

Councilmember Starkey made a motion, seconded by Councilmember Crowley, to approve subject to the research through SunBiz, licensing and insurance. In a voice vote, all voted in favor. (Motion carried 5-0)

4.13 Vice-Mayor Caletka made a motion, seconded by Councilmember Crowley, to approve subject to no increase, and to check SunBiz and insurance. In a voice vote, with Mayor Truex dissenting, all voted in favor. (Motion carried 4-1)

Mayor Truex wondered what would happen if the two firms to whom they had denied increases declined the contract. He felt it was a good idea to have multiple firms.

4.14 Vice-Mayor Caletka noticed there was a tie for second place and he had hoped to get a copy of all proposals for those two companies to review. He referred to a letter from a vendor claiming she had been shut out of the process for perhaps being one minute late. Vice-Mayor Caletka wondered how they could agree on the time, or argue over one minute.

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Councilmember Crowley had received a letter from the vendor as well, and said he did not want to micro-manage, but suggested that the 5:00 p.m. closing time be adopted as the deadline. He noted that the highest-rated architect had been rated first by every staff member, so there was no question about that firm's selection.

Councilmember Starkey said notice of another bid acceptance she received yesterday used the words "on or about two o'clock" she did not know if other bid notifications were more specific. She agreed that changing the deadline to close of business would help resolve the issue.

Councilmember Luis said it was common for bids to be rejected for lateness. He noted that after the deadline, bids were opened. He did not favor changing the time.

Mr. Shimun pointed out that there was a difference between the "drop dead" time for receipt of the bid, and the bid opening time. This might be the explanation for the "on or about" time to which Councilmember Starkey referred.

Mr. Cherof said deadlines were appropriate, legal, and defensible. He explained to Councilmember Crowley that the deadline was for handing the package over to the correct person.

Vice-Mayor Caletka did not like having the two contracts under one agenda item for approval. He reiterated his request to table the item to their next meeting.

Vice-Mayor Caletka made a motion, seconded by Councilmember Crowley, to table.

Mr. Shimun clarified for Councilmember Crowley that Council could confirm just the highest-ranked firm and wait on the second. Vice-Mayor Caletka amended his motion to approve only the first-ranked firm. In a voice vote, all voted in favor. (Motion carried 5-0)

Vice-Mayor Caletka made a motion, seconded by Councilmember Crowley, to table approval of the second-ranked firm to the next meeting. In a voice vote, with Mayor Truex dissenting, all voted in favor. (Motion carried 4-1)

4.17 and 4.19 Councilmember Crowley asked to table 4.17 and 4.19 to the first meeting in May to allow the applicant to request variances from the Water Management District and to review the tree survey. He wanted to hear the rezoning item this evening, pointing out that two hearings were required.

Rhon Ernest-Jones, representing the applicant, said there were a number of issues other than water management that required review. He described problems experienced with plan review and stated it had taken 18 months to complete a process that should have taken 6 months, and another delay would "kill it."

Councilmember Starkey said she wanted to discuss aspects of the site plan and Councilmember Crowley said he could wait until after Council and public comment to move to table the item.

Vice-Mayor Caletka felt it should go to the Water Management District prior to a Council vote.

Councilmember Crowley recommended moving 4.17 and 4.19 to be heard with item 6.1 and withdrew his request to table. (Items 4.17 and 4.19 were subsequently tabled to May 2, 2006.)

4.18 Mayor Truex apologized for having pulled this item in error.

Councilmember Crowley made a motion, seconded by Vice-Mayor Caletka to approve. In a voice vote, all voted in favor. (Motion carried 5-0)

4.20 Councilmember Starkey made a motion, seconded by Mayor Truex, to approve. In a voice vote, all voted in favor. (Motion carried 5-0)

4.21 Councilmember Starkey made a motion, seconded by Mayor Truex, to approve. In a voice vote, all voted in favor. (Motion carried 5-0)

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6. PUBLIC HEARING

Ordinance - First Reading/Quasi Judicial Item (Second and Final Reading to be held April 18, 2007)

6.1 AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, APPROVING REZONING PETITION ZB 11-1-05, CHANGING THE CLASSIFICATION OF CERTAIN LANDS WITHIN THE TOWN OF DAVIE FROM AG, AGRICULTURAL DISTRICT TO R-1, ESTATE DWELLING DISTRICT; AMENDING THE TOWN ZONING MAP TO COMPLY THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. (ZB 11-1-05, Rhon Ernest-Jones Consulting Engineers/Nichols Associates, Ltd., southwest corner of Flamingo Road and SW 26 Street) (tabled from April 4, 2007) [see related items 4.17 and 4.19] *Planning and Zoning Board recommended approval*

Mr. Ernest-Jones agreed to hearing all three items [items 4.17, 4.19 and 6.1] together.

Mr. Cherof swore in witnesses and explained the rules of evidence.

Mr. Cherof read the resolution and ordinance by title. Ms. Nolan summarized the planning report.

Mike Woodman, the applicant's engineer, said site access was an issue. He advised that they had held the first community meeting in January 2006, where they proposed an access through SW 26 Street. Mr. Woodman stated that the residents had expressed concern that SW 26 Street would "punch through" to their neighborhood, and the plan was revised for access from Flamingo Road. This had been based on a verbal commitment from FDOT for a secondary access in that area. This change had been acceptable to the residents and the applicant had agreed to petition the Town to vacate SW 26 Street and rededicate that area as open space. FDOT later informed the applicant that they would not allow the access point from Flamingo Road and they must access it from SW 26 Street. Mr. Woodman believed they had complied with outstanding Development Review Committee's comments, and concurred with the Site Plan Committee and Planning and Zoning Board conditions.

Mr. Ernest-Jones reiterated that they had not been trying to deceive the neighbors about FDOT and the Flamingo Road access. He acknowledged the neighbors' concern about SW 26 Street and agreed to do anything reasonable to protect their interests, including adding a plat note restricting access. They would also vacate the right-of-way through Broward County's vacation process to alleviate concern about the County/Town vacation. Mr. Ernest-Jones offered to make this a private ingress/egress easement, but the lake right-of-way must be public per rural lifestyle regulations.

Councilmember Luis was concerned that SW 26 Street not open all the way through and asked if vacation from the County would protect them from SW 26 Street's ever opening up. Mr. Cherof said this would protect them and this could be addressed through plat notes.

Councilmember Starkey had been concerned about this as well and wanted this added to the plat, with the assurance that vacated area west of the access point would be dedicated to the Town for a trail and open space. She thought Council should also dedicate it as a conservation area.

Mr. Ernest-Jones felt that making the road private would further allay the fears of residents to the west, as this would prevent future public access. Councilmember Starkey noted the costs of maintaining a public road.

Councilmember Starkey wanted flat stones used instead of the current construction of the culvert, and for its elevation to be increased. Mr. Ernest-Jones said this was possible. Councilmember Starkey was concerned about the landscaping buffer versus property owners' desire to fence in entire lots. After discussing this with Acting Planning and Zoning Manager Marcie Nolan, Councilmember Starkey said Council's only alternative to avoid this problem in the future was a text amendment to allow a fence to be constructed through the landscaping easement.

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Ms. Nolan said the fence problem affected this site plan's northeast corner only. She explained that the landscape buffer was exclusive of the lot lines and became a common area, in which the Code did not allow property owners to erect a fence. This caused resentment on the part of the property owners. Ms. Nolan said staff was willing to amend this provision to allow the owner to fence through a landscape buffer, if this was the desire of the homeowner's association, or to not fence it if the homeowner's association would take full responsibility. She reiterated that this provision only went into effect when property was adjacent to a right-of-way.

Councilmember Starkey asked about the south lots. Mr. Ernest-Jones said the carrot wood trees formed the buffer here, but these would be removed as the lots were developed. They had agreed to put four additional oak trees on all of the south lots.

Mr. Ernest-Jones informed Mayor Truex he did not anticipate the need for any variances.

Councilmember Crowley asked about the success rate of relocating the oak trees. Mr. Ernest-Jones said his experience moving trees had a very high success rate.

Mr. Ernest-Jones said the applicant understood and had no problem with the Planning and Zoning Division's 11 comments. He said the Division had advised them not to change the plans submitted to Council because they wanted Council to see the same plans the Site Plan Committee had seen. Councilmember Crowley said there were also nine comments from Engineering. Mr. Ernest-Jones stated the nine engineering comments had already been addressed.

Ms. Nolan said the second review by the Site Plan Committee was specifically for the tree mitigation plan and tree survey. The applicant must address all of these conditions prior to achieving staff sign off. Ms. Nolan stated that the applicants bonded the large tree removals for five years, for up to \$50,000. If a tree died before the five-year mark, the money was provided to the Town to plant mitigation trees.

Mr. Ernest-Jones agreed to all the Site Plan Committee recommendations. He said they also proposed a guardrail at strategic locations around the lake. Councilmember Starkey wanted to be sure the trees were bonded and any trees that died would be replaced with a tree of comparable size. Mr. Ernest-Jones said they had no choice. He also agreed to the stonework on the culvert to make it look like a bridge. Councilmember Crowley was concerned about one particular tree on one lot, and Mr. Ernest-Jones agreed to create a special layout for this lot to work around the tree.

Mr. Cherof opened the public hearing portion of the meeting.

Judy Paul, 14421 SW 24 Street, advised that she had discussed the tree situation with the applicant. She was concerned that SW 26 Street never be allowed to go through as well, and said this should be included in all motions. Ms. Paul suggested that pavers be included where the trail crossed the road, and that horse-crossing signs be used to alert motorists and pedestrians to the trail. She asked that a see-through guardrail be used where needed around the lake.

Mr. Cherof closed the public hearing.

Council disclosed communications they had regarding this item.

Councilmember Crowley made a motion, seconded by Councilmember Starkey, to table item 4.17 to May 2, 2006, incorporating many of the suggestions Council had given. In a voice vote, all voted in favor. (Motion carried 5-0)

Councilmember Crowley made a motion, seconded by Councilmember Starkey, to table item 4.19 to May 2, 2006 to include the comments Council made. In a voice vote, all voted in favor. (Motion carried 5-0)

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Councilmember Crowley made a motion, seconded by Councilmember Starkey, to approve the ordinance on first reading, with the conditions that were stipulated and the restrictions on the plat. Councilmember Crowley indicated that the second reading would be held on May 2, 2007. Council clarified that the conditions included: the Planning and Zoning Division and Site Plan Committee recommendations; redesigning lot 6, the one with the oak tree in the center; protection of vehicles from the lake; the stonework along the bridge; higher access; bonding for the trees; brick pavers suggested by Ms. Paul; and the decorative guardrail. Mr. Cherof said that Council also expected to see the revised plat for review.

In a roll call vote, the vote was as follows: Mayor Truex - yes; Vice-Mayor Caletka - yes; Councilmember Crowley - yes; Councilmember Luis - yes; Councilmember Starkey - yes. (Motion carried 5-0)

Quasi-Judicial Items

6.2 **VARIANCE** - V 12-1-06, Moses, 2353 SW 132 Way (A-1) (to reduce the south side setback from 30 feet to 25 feet in order to accommodate an addition to the existing home) *Planning and Zoning Board recommended approval*

Mr. Cherof referred to a memorandum he had created outlining the requirements for a variance and reminded Council that every question in his memo must be answered in the affirmative to grant the variance.

Acting Deputy Planning and Zoning Manager David Abramson summarized the planning report.

Thomas Moses, the applicant, stated that they wanted to improve their home without introducing a jog in the building to accommodate the addition. They were trying to make the addition appear original to the home.

Councilmember Starkey asked Mr. Abramson if the new Code revisions required the variance. Mr. Abramson explained that the new requirements added five feet to each property's setback. Councilmember Starkey said she preferred maintaining the house line. Mr. Kutney said the test of whether the hardship was self-created was whether the addition could be made without the variance. In this case, the owner could construct an addition on the house without the variance, regardless of the new regulations. Mr. Cherof agreed and said variances should be granted only when denial of the variance would deny the owner use of the property. Councilmember Starkey noted that there were cases such as this that when the owner purchased the property this would have been allowed, but subsequent Code changes necessitated the variance. She felt these changes should be applied to new development only and wondered if the Code should be changed to reflect this. Mr. Cherof said he had pointed out in his memo that these types of issues should be addressed in the Code because granting a variance to a single property owner could appear to be favoritism.

Mr. Abramson confirmed for Councilmember Luis that the Planning and Zoning Board and homeowner's association had both approved the variance. Adjacent neighbors to the north and south approved as well. Councilmember Luis said he had no problem with the request.

Councilmember Crowley said he appreciated the memo, and asked if "by law," Council could approve the variance if it did not meet the requirements. Mr. Cherof explained that if Council answered any question in his memo with a "no," they should deny the variance. If this were followed, any variance they granted could be defended. If they granted variances where the seven standards were not met, it would be difficult to defend. Mr. Cherof said Council could request that staff examine the variance section of the Code and create "something perhaps a little bit more forgiving and a little bit more benign to give you the flexibility that I'm hearing you'd like to have."

Mayor Truex and Councilmember Crowley felt all the criteria had been met.

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Councilmember Starkey felt they should look at the rural lifestyle amendments to “eliminate the need for all of these various variances that we could look at easily to fix.”

Mr. Cherof opened the public hearing portion of the meeting. As no one spoke, he closed the public hearing.

Council had no disclosures on this item.

Vice-Mayor Caletka felt this request met all the criteria, and that “a legal argument is considerably weakened if they don’t actually come out to protest this variance in the first place.”

Councilmember Starkey made a motion, seconded by Councilmember Luis, to approve adding that they wanted to be very careful that they were not opening up that as well, and to allow Mr. Cherof to look into a better way to handle this, especially if it came to the support of the community and homeowner’s association. In a roll call vote, the vote was as follows: Mayor Truex - yes; Vice-Mayor Caletka - yes; Councilmember Crowley - yes; Councilmember Luis - yes; Councilmember Starkey - yes. (Motion carried 5-0)

- 6.3 **SPECIAL PERMIT** - SE 9-1-06, Stiles Corporation d/b/a Stiles Landscape Company, 2100 SW 154 Street (A-1) (to allow the installation of a modular trailer to be used as a storage and shelter office and to allow the staging of mulch on the subject property) *Planning and Zoning Board recommended approval subject to the posting of a sufficient bond to be set by Town Council for pest removal and road repairs if required; and a note to Council - it was the consensus of the Board that the special permit was not required for the “use”*

Ms. Nolan summarized the report.

Councilmember Starkey said there were Code violations throughout the Town for excessive mulching and wondered why staff would support something like this. Mr. Kutney acknowledged there were several Code violation cases proceeding, but advised Council to weigh the evidence in this specific case. Councilmember Starkey felt this was a compatibility issue and an environmental problem. Mr. Kutney said if this site were operated as proposed, it would be appropriate. Councilmember Starkey asked him to “go over some of the ideas for when it wouldn’t be appropriate, because I do believe that these are incompatible, especially in residential areas, and I have a problem with mulching.” Ms. Nolan explained that this was an agricultural zoning district, in which staff wanted to encourage agricultural activities. She indicated that the land was being looked at for nursery business activities, which was different from many of the cases to which Councilmember Starkey referred. Ms. Nolan added that the applicant was here to allow Council to apply conditions which they could then regulate. Based on the applicant’s written commitments, staff had found the use could be compatible with the surrounding uses. Councilmember Starkey noted that the Agricultural Advisory Board had recommended changes to the Code regarding mulching issues. Mr. Kutney stated that this was based on people’s attempt to use the agricultural exemption to perform activities that did not truly qualify for the agricultural exemption. That was not true in this case.

Councilmember Luis asked if the special permit could be revoked in six months if the owner was not honoring the conditions. Ms. Nolan responded that the special permit was only valid for 18 months, whereupon the applicant must return to Council to request renewal. She felt Council could put a condition on the approval that any violation would be brought to Council to decide what to do about the license.

Don Winset, president of Stiles Landscaping, agreed to all of the conditions, and to providing a bond for any possible damage.

Councilmember Crowley asked about traffic issues. Mr. Winset said a truck would deposit the mulch three or four times per week. Councilmember Crowley said he had passed by the site and it

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appeared very clean. He had no objection, but suggested Council review the permit renewal in one year instead of 18 months and that the applicant post a \$20,000 bond for damage.

Mr. Cherof opened the public hearing portion of the meeting.

Karen Stenzel-Nowicki, 5480 SW 55 Avenue, felt that the agricultural use of mulching was the concern, not the exemption. She noted the continuing Code enforcement problem between 58th and 61st Avenues at another landscape nursery. Ms. Stenzel-Nowicki pointed out that mulching could present a very serious problem far beyond the boundaries of the property on which it was allowed. Councilmember Crowley reminded Ms. Stenzel-Nowicki that this request was to store mulch, not to create it, which Mr. Winset confirmed.

Council had no disclosures on this item.

Vice-Mayor Caletka said he would vote against this, as he believed it was not in line with the surrounding neighborhoods. Councilmember Starkey said she would vote against it because of the mulch itself, not the nursery use. Councilmember Crowley said he would oppose a site that made mulch, but this was not that type of operation. Councilmember Luis had received calls from neighbors who were only concerned with whether mulch was made at the property and were not concerned with mulch being stored there.

Ms. Nolan confirmed that all of the conditions would be contained in the special permit order.

Councilmember Crowley made a motion, seconded by Councilmember Luis, to approve the request, subject to a one-year renewal that came back to Council, and a \$25,000 bond for street repair. In a roll call vote, the vote was as follows: Mayor Truex - yes; Vice-Mayor Caletka - no; Councilmember Crowley - yes; Councilmember Luis - yes; Councilmember Starkey - no. (Motion carried 3-2)

Items to be tabled

6.4 STAFF REQUESTING A TABLING TO MAY 16, 2007

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE, CHAPTER 12, ARTICLE II, SECTION 12-24, STATEMENT OF PURPOSE AND INTENT OF ZONING DISTRICTS; ARTICLE III, SECTION 12-32, TABLE OF PERMITTED USES; SECTION 12-33 GENERAL REGULATIONS; SECTION 12-34, DETAILED USE REGULATIONS – STANDARDS ENUMERATED; ARTICLE IV, SECTION 12-54, NON-RESIDENTIAL PERFORMANCE STANDARD – COMMERCIAL CONSERVATION; ARTICLE V, SECTION 12-83, COMMERCIAL CONSERVATION STANDARDS; ARTICLE VI, SECTION 12-107, LANDSCAPING STANDARDS FOR LOTS AND SITES; ARTICLE VII, SECTION 12-208, REQUIREMENTS FOR OFF STREET PARKING; ARTICLE XII, SECTION 12-375, MASTER PLANNED DEVELOPMENTS; AND ARTICLE XIV, SECTION 12-503, DEFINITIONS; AMENDING RECYCLING, SCRAP METAL PROCESSING , AND AUTOMOBILE WRECKING YARDS AS EXISTING LEGAL USES IN THE M-3 ZONING DISTRICT WHEN THE UNDERLYING LAND USE CLASSIFICATION IS INDUSTRIAL AND THE EXISTING USE IS LEGALLY PERMITTED; PROVIDING FOR INCLUSION IN THE TOWN CODE; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

This item was tabled earlier in the meeting.

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7. APPOINTMENTS

7.1 Mayor Truex

- 7.1.1 Parks and Recreation Advisory Board (one exclusive appointment - term expires April 2008) (members should have a concern with or an interest in the park facilities and recreational needs of the citizens of the Town)

Mayor Truex appointed Doug Notman.

- 7.1.2 Senior Citizen Advisory Committee (one exclusive appointment - term expires April 2008) (members shall be a minimum 60 years of age)

No appointment was made.

- 7.1.3 Water and Environmental Advisory Board (one exclusive appointment; term expires April 2008) (insofar as possible, one member shall be a licensed engineer)

No appointment was made.

- 7.1.4 Youth Education and Safety Advisory Board (one exclusive appointment - term expires April 2008) (members shall, whenever possible, have interest and expertise in law enforcement, elementary school instruction, education matters, child psychology, pediatric medicine, parenthood and grandparenthood)

No appointment was made.

7.2 Councilmember Luis

- 7.2.1 Airport Advisory Board (two exclusive appointments; terms expire December 2007)

No appointments were made.

7.3 Councilmember Starkey

- 7.3.1 Airport Advisory Board (one exclusive appointment; terms expire December 2007)

Councilmember Starkey appointed Sidney Calloway.

- 7.3.2 Mobile Home Task Force (one exclusive appointment - representing a mobile home park owner/manager)

No appointment was made.

- 7.3.3 Parks and Recreation Advisory Board (one exclusive appointment - term expires April 2008) (members should have a concern with or an interest in the park facilities and recreational needs of the citizens of the Town)

Councilmember Starkey appointed John Pisula.

- 7.4 Unsafe Structures Board (two non-exclusive appointments; terms expire April 2009) (members shall be permanent resident or have their principal place of business within the Town's jurisdiction) (one appointment shall be a plumbing contractor and one appointment shall be a real estate property manager)

No appointments were made.

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8. OLD BUSINESS

There was no old business to be discussed.

9. NEW BUSINESS

There was no new business to be discussed.

10. MAYOR/COUNCILMEMBER'S COMMENTS
COUNCILMEMBER LUIS

BOARD ATTENDANCE. Councilmember Luis agreed with the suggestion last month that absence from a meeting that resulted in lack of a quorum should be considered an absence. Assistant Town Clerk McDaniel said that staff had requested a legal opinion on this issue and on a few other issues which should make the boards work better.

COUNCILMEMBER CROWLEY

WATER RESTRICTIONS. Councilmember Crowley felt residents must be kept aware of this serious problem and felt the Town must scrutinize developments and encourage them to use best management practices to conserve water. He wanted the Town to be the first in Broward County to institute year-round restrictions and asked staff to create some pros and cons and to place this item on an upcoming agenda.

VICE-MAYOR CALETKA

PLANNING AND ZONING BOARD APPOINTMENTS. Vice-Mayor Caletka asked if there were any members of the Planning and Zoning Board who "ruffled feathers." He was checking on an appointment of his who had been considered contentious and whom he wanted to re-appoint.

GREEN BUSES. Vice-Mayor Caletka wanted to create a resolution to encourage the Broward County Commission to consider green buses for any future acquisitions.

WATER RESTRICTIONS. Vice-Mayor Caletka supported increased water restrictions.

MAYOR TRUEX

SALES TAX PRESENTATION. Mayor Truex said Bob Legg wanted to give a presentation regarding sales taxes.

MAYORS' INITIATIVE ON GLOBAL WARMING PRESENTATION. Mayor Truex said the Broward County Audubon Society wanted to give a presentation of the Mayors' Initiative on Global Warming and the creation of a "green committee" to discuss and create green policies.

MOBILE HOME ORDINANCE. Mayor Truex asked if staff had addressed the question of whether the mobile home ordinance would prevent someone from installing a new mobile home or a shed. Mr. Kutney said this should be addressed by the Housing and Community Development Department or by the Town Attorney. He agreed to let Council know if there were any issues they should address.

ILLEGAL ATV USE. Mayor Truex asked how the Town was dealing with the use of these vehicles. Police Captain James Moyer explained that depending on the situation, the vehicle could be towed and a citation issued. Mayor Truex felt the vehicles should be impounded or towed to serve as a deterrent.

11. TOWN ADMINISTRATOR'S COMMENTS

GOAL SETTING SESSION. Mr. Shimun advised that two Councilmembers had a conflict with the proposed April 13th goal setting session and asked for direction. After a brief discussion, Council agreed to the session being held in the afternoon.

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CONFERENCE. Mr. Shimun advised that the ICMA was sponsoring a post-disaster recovery conference May 2-4, 2007 and he asked approval for Mr. Cohen to take his place at the Council meeting. Council had no objections.

12. TOWN ATTORNEY'S COMMENTS

No comments were provided.

13. ADJOURNMENT

There being no further business to discuss and no objections, the meeting was adjourned at 10:55 p.m.

Approved _____

Mayor/Councilmember

Town Clerk